INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Specification of errors to be urged	4
Argument	4
Conclusion	6

CITATIONS

Cases:	
United States v. *Aetna Casualty & Surety Co.*, No. 35, this Term	2, 5
United States v. *Chicago, Rock Island & Pacific Ry. Co.*, 171 F. 2d 377	1, 4
United States v. *Hill*, 174 F. 2d 61, modifying 171 F. 2d 404	5
United States v. *The Home Insurance Co.*, No. 38, this Term	5
United States v. *Yorkshire Insurance Co.*, No. 37, this Term	5
Statutes:	
Federal Tort Claims Act, Act of August 2, 1946, c. 753, Title IV, 60 Stat. 842, formerly 28 U. S. C. 931 *et seq*	2, 4
R. S. 3477, 31 U. S. C. 203	2, 3, 5

855928—49

In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 36

UNITED STATES OF AMERICA, PETITIONER

v.

WORLD FIRE AND MARINE INSURANCE COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The United States District Court for the District of New Mexico did not write an opinion. Its findings of fact and judgment appear in the printed record at pages 7–10. The United States Court of Appeals for the Tenth Circuit *did not* write an opinion in this case, but affirmed on the authority of its opinion in the *United States of America* v. *Chicago, Rock Island and Pacific Railway Company,* reported at 171 F. 2d 377.

JURISDICTION

The judgment of the Court of Appeals was entered on December 2, 1948 (R. 17). The petition for certiorari was filed March 2, 1949, and

was granted April 25, 1949 (R. 18). The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether the prohibition by R. S. 3477 (31 U. S. C. 203) of the assignment of claims against the United States, may be invoked by the Government to bar recovery of a judgment against it under the Tort Claims Act by an insurance carrier claiming by subrogation the right to prosecute to judgment in its own name a portion of the claim of the insured original claimant against the United States.

STATUTES INVOLVED

The statutes and rules involved are set forth in Appendix A to the Government's brief in *United States* v. *Aetna Casualty and Surety Company*, No. 35, this Term, and will not be reprinted here.

STATEMENT

A truck owned by Donald E. Harding collided on January 2, 1947, near Aragon, New Mexico, with a truck owned by the United States (R. 7). The accident was due to the negligence of the Government employee who was driving the latter vehicle (R. 7). The loss to Harding resulting from this collision amounted to $884.50, the cost of necessary repairs, and $600.00, the cost of renting a replacement truck while his own was being repaired, a total of $1,484.50 (R. 8). Respondent World Fire and Marine Insurance Company, a

Connecticut corporation, under the terms of a collision insurance policy which it had issued to Harding, paid him $784.50, the cost of the repairs less a deduction of $100 provided for in the policy (R. 8).

Respondent World Fire and Marine Insurance Company, joining Harding as a plaintiff, brought an action against the United States under the Federal Tort Claims Act in the United States District Court for the District of New Mexico, to recover $784.50, the amount it had paid under its policy, together with the costs of the action, while Harding sought judgment for $700.00, the amount of his loss not covered by insurance (R. 1–2). Both by motion to dismiss (R. 3) and by answer (R. 5) the Government urged that the prohibition by R. S. 3477, 31 U. S. C. 203, of the assignment of claims against the United States precluded respondent from suing and recovering judgment in its own name. After a trial on the merits the district court found the facts as stated above and entered judgment in favor of respondent for $784.50, together with costs of $43.64, and in favor of Harding for $700.00 (R. 7–10).

The United States took an appeal on the points of law raised by its motion and answer as to the right of respondent to recover judgment in its own name (R. 10). The United States Court of Appeals for the Tenth Circuit affirmed without opinion, on the authority of its holding

in *United States of America* v. *Chicago, Rock Island and Pacific Railway Company*, 171 F. 2d 377, that a "subrogee or indemnitee" may maintain an action against the United States under the Federal Tort Claims Act (R. 17).

SPECIFICATION OF ERRORS TO BE URGED

The Court of Appeals erred:

1. In holding that respondent, a partial subrogee, was entitled to recover a separate judgment in its own name against the United States under the Federal Tort Claims Act.

2. In affirming the judgment of the district court.

ARGUMENT

The respondent insurance carrier joined with the original claimant in bringing suit and sought judgment in its own name against the United States under the Tort Claims Act. It predicated its right to recover judgment in its own name upon the theory that by reason of its partial payment, pursuant to the policy, of the original claimant's loss it was subrogated to part of the insured original claimant's unliquidated tort claim against the United States (R. 2). Respondent also obtained from the original claimant an express written assignment of his claim in consideration of payment (R. 15–16).

Such a written assignment by the original claimant of his claim against the United States was

obviously prohibited by R. S. 3477, so as to preclude respondent from bringing suit in its own name. To the extent that respondent relied upon the alternate theory of an equitable assignment by subrogation, arising from the fact of payment to the original claimant, its assured, the Government contends that R. S. 3477 equally precludes respondent from recovering separately under the Tort Claims Act in its own name.

The reasons and authorities establishing the correctness of the Government's view are set forth in detail in our briefs in the companion cases of *United States* v. *Aetna Casualty and Surety Company,* No. 35, this Term, and *United States* v. *Yorkshire Insurance Company* and *The Home Insurance Company,* Nos. 37 and 38, this Term, and need no repetition here. Specifically, we believe that R. S. 3477 required the entry of judgment in favor of the original claimant, Donald E. Harding, alone, rather than for the original claimant and for respondent separately for the amounts of their respective interests. So far as concerns the rights of respondent against its assured, the original claimant, they may be fully protected by a declaration in the judgment that the original claimant shall pay respondent, out of the net proceeds of his judgment against the United States, the amounts to which respondent is entitled. *United States* v. *Hill,* 174 F. 2d 61, modifying 171 F. 2d 404 (C. A. 5).

CONCLUSION

For the reasons set forth in our briefs in Nos. 35, 37 and 38, this Term, it is respectfully submitted that the decision of the court below should be reversed and the cause remanded, with instructions to the district court to modify the judgment previously rendered by entering judgment in favor of the original claimant, Donald Harding, upon the entire cause of action.

PHILIP B. PERLMAN,
Solicitor General.

H. G. MORISON,
Assistant Attorney General.

LEAVENWORTH COLBY,
SAMUEL D. SLADE,
JOSEPH KOVNER,
Attorneys.

SEPTEMBER 1949.

U. S. GOVERNMENT PRINTING OFFICE: 1949